IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2681 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEP PLASTIC PRODUCTS

Versus

ASSISTANT COMMISSIONER

Appearance:

1. Special Civil Application No. 2681 of 2005
MR MAYUR RAJGURU for Petitioner No. 1
MR JITENDRA MALKAN for Respondent No. 1-3
NOTICE SERVED for Respondent No. 1-2
NOTICE NOT RECD BACK for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 29/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

This petition has been moved seeking a writ to quash and set aside order dated 22nd June, 2004 (Annexure-F) made by Customs, Excise & Service Tax Appellate Tribunal (CESTAT).

2. Heard Mr.Mayur Rajguru, learned advocate for the petitioner. Though the petitioner has prayed for quashing and setting aside the order dated 22nd June, 2004 (Annexure-F) only the advocate, during course of hearing, has made an oral prayer seeking permission to amend the prayer clause so as to also challenge order dated 30th October, 2003 (Annexure-E). Accordingly, the learned advocate for the petitioner is permitted to amend the prayer clause.

3. The issue lies in a very narrow compass and hence the matter is taken up for final hearing and disposal today. RULE. Mr.Y.N.Ravani, learned Additional Standing Counsel for Central Government, appears and waives service of rule on behalf of the respondent authorities.

4. The petitioner, a partnership firm availed credit under MODVAT Scheme in relation to three invoices during Financial Year 1994-1995. According to respondent No.1 the credit was wrongly availed of by the petitioner and, therefore, issued show-cause notice in this regard. The grievance of the petitioner is that without considering reply respondent No.1 disallowed the MODVAT credit. The said Order-in-Original came to be confirmed by respondent No.2 - Commissioner (Appeals) and, therefore, the petitioner carried the matter in appeal before CESTAT. Though the learned advocate for the petitioner has made various submissions on merits of the controversy it is not necessary for the Court to render any opinion on merits of the case in light of the view that the Court is inclined to take.

5. As can be seen from the impugned order dated 30th October, 2003 (Annexure-E) CESTAT has recorded that there was no appearance on behalf of the appellant-petitioner but written submissions dated 23th October, 2003 had been filed. CESTAT records that such written submissions are taken on record but thereafter in the entire order not a single sentence appears to show as to what were the submissions made on behalf of the petitioner. The submissions made by Jr.D.R. are recorded as well as the findings of Commissioner (Appeals) in Paragraph No.1 of

the impugned order. Thereafter CESTAT disposes off the appeal with the following observations in Paragraph No.2:

> "2. After hearing the learned J.D.R. and perusal of the case records, I do not find any infirmity in the order passed by the Commissioner (Appeals) requiring interference. As such, the appeal is rejected."

6. Thus, it is apparent that the Tribunal has made a short shrift of its duty. In a similar matter in case of Nirman Textile Mills Pvt. Ltd. Vs. A.C.I.T., Tax Appeal No.69 of 2004, decided on 10th January 2005, this Court has stated thus:

> "In 1959 the Apex Court had observed that if the Tribunal arrives at its own conclusion of fact after due consideration of evidence before it the Court will not interfere, but for this purpose it was necessary that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the points for determination before it, and what was the evidence pro and contra in regard to each of the issues and what were the findings reached on the evidence on record before it. (Omar Salay Mohamed Sait Vs. Commissioner of Income-Tax, Madras, [1959] 37 ITR 151). This position has been reiterated once again in 2002 by this Court after referring to the aforesaid judgment in the two decisions rendered in case of Mercury Metals (P) Ltd. Vs. Assistant Commissioner of Income-Tax, [2002] 257 ITR 297 and Rameshchandra M. Luthra Vs. Assistant Commissioner of Income-Tax, [2002] 257 ITR 460. The tribunal has passed the order on 29-08-2003 and yet seems to be blissfully unaware of the legal position."

The order of the Tribunal, when read as a whole, must reflect the aforesaid position and establish that it was conscious and alive as to the controversy which was brought before it by the authorities.

7. In the present case, admittedly, as can be seen from Paragraph No.2 of the impugned order (Annexure-E) the Tribunal has failed to act in accordance with law while passing the impugned order. In the circumstances the order dated 6th November, 2003 (Annexure-E) is hereby quashed and set aside.

8. It is necessary to record that despite the fact that the petitioner applied to the Tribunal seeking rectification of its order vide subsequent order dated 22nd June, 2004 (Annexure-F) the Tribunal has rejected the application stating that it has no authority to review. The petitioner had specifically pointed out to the Tribunal that its earlier order was required to be set aside as the same was a non-speaking order but the Tribunal has, unfortunately, failed to appreciate the same. As a natural corollary and consequence order dated 22nd June, 2004 (Annexure-F) can not be permitted to survive and is hereby quashed and set aside.

9. In the result, the petition is allowed. The appeal is restored to the file of CESTAT and CESTAT shall deal with the contentions raised by both the sides after giving adequate and reasonable opportunity of hearing to both the sides and dispose off the appeal afresh on merits. Rule made absolute. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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